the appellant had excluded P3 because he believed the confession contained therein was false or because he wanted to screen Razali from legal punishment. The appellant was convicted because he could not give a satisfactory reason for not including P3 in the IP.

Another ground of appeal was that the trial judge was wrong to hold that the appellant had no discretion to decide whether or not to include P3 in the IP on the ground that PW3, his superior officer, had testified that the appellant had 'a discretion to decide a case whether or not to charge or not for consumption or possession of controlled drug based on the facts of the case'. In my view, this complaint is misdirected. What PW3 said was not inconsistent with what the trial judge had held. The appellant could have recommended a charge for possession even if he had included P3 in the IP.

Counsel for the appellant also submitted that P3 was not evidence as contemplated by s 201 of the Penal Code. Counsel referred to the case of *Anverkhan Mahamadkhan* v *Emperor*[6] which decided that the expression 'evidence' in s 201 of the Indian Penal Code 'refers, not to evidence in the extensive sense in which the word is used in the Indian Evidence Act, but to evidence in its primary sense as meaning anything that is likely to make the crime evident, such as the existence of wounded corpse or of blood stains, fabricated documents, or similar material objects indicating an offence has been committed'. Counsel submitted that the 'evidence' in this case was the stick of cannabis and not P3. The trial judge held that P3, being a voluntary confession that was admissible in evidence to prove the guilt of Razali, was evidence under s 201. I agree entirely with this conclusion. The stick of cannabis was, in view of the statutory presumption, prima facie evidence that an offence had been committed. P3, until disbelieved, was evidence that Razali had committed the offence.

Counsel for the appellant also contended the appellant did not cause P3 to disappear *deliberately*. There is no substance in this argument. The omission to include P3 in the IP was not inadvertent. P3 was omitted knowingly and purposefully and therefore deliberately. In any case, the element of deliberation is not an ingredient of the offence. The essential element is 'cause'.

The last material ground of appeal was that Razali's mother (DW2) corroborated the evidence of the appellant on the circumstances which led him to take P4 and to discard P3 and that this must raise a reasonable doubt as to the intention of the appellant. In my view, although the trial judge did not expressly say whether he believed or disbelieved this evidence, he summarized and adverted to it in his grounds of decision. This must mean that he took such evidence into account before deciding whether or not such evidence raised a reasonable doubt. He decided it did not, and that could only have been due to his disbelieving the evidence of the mother.

For the above reasons, I am unable to agree that the appellant was wrongly convicted or that there has been a miscarriage of justice.

As for the appeal on sentence, I do not agree with the submission that the sentence was manifestly excessive. The trial judge had taken into account all the mitigating factors. The appellant was a police officer entrusted with the responsible job of investigating drug offences. Instead, he did the opposite. Public confidence in policing and the investigating of crime will diminish unless police officers perform their duties without fear or favour. This type of offence by a police officer calls for a custodial sentence.

Accordingly, the appeal against conviction and sentence is dismissed.

Appeal dismissed.

Solicitors: *Amarjit Rubin & Partners.*

Reported by *Terence Tan Bian Chye*

Castle Fitness Consultancy Pte Ltd v Manz

HIGH COURT (SINGAPORE) — SUIT NO 6964 OF 1985
COOMARASWAMY J
28 SEPTEMBER 1989

Civil Procedure — Injunction — Discharge of interim injunction by ex parte application of defendant — Circumstances allowing such application — Need for notice of ex parte application to adversary — Failure to make full and frank disclosure — Consequences of — Queen's Bench Division Practice Direction Part B-3, para 2(c) — Rules of the Supreme Court [UK], O 29 r 1 — Rules of the Supreme Court 1970, O 29 r 1

An interim injunction was obtained by the plaintiffs against the defendant which restrained the defendant, his servants or agents from infringing the plaintiffs' rights in an agency agreement entered into between the plaintiffs and Hydra Fitness Equipment Ltd ('HFEL') and from selling products in the territories of Singapore and the surrounding region. The defendant then made an ex parte application to discharge the interim injunction. The papers were not served on the plaintiffs. The defendant's solicitors informed the plaintiffs' solicitors of the ex parte application by telex.

Held, discharging the injunction:

(1) The defendant's solicitors were, in giving notice to the plaintiffs' solicitors of the ex parte application, acting under the now re-activated and established practice in England resulting in what is called 'an opposed ex parte application'. In England, this practice is required by the Queen's Bench Division Practice Direction Part B-3 para 2(c) dated 30 March 1983, in reference to the UK Rules of the Supreme Court O 29 r 1. This practice direction in the Queen's Bench and the Chancery Divisions are the foundation on which English decisions on interim injunctions are based. In view of the highly persuasive authority in

Singapore of English decisions on injunctions, these foundations cannot be ignored by a Singapore court.

(2) The opponent should be given notice of the ex parte application and invited to attend. Alternatively, in appropriate and justifiable instances, adequate reason for not giving such notice should be given to the court on affidavit. The possibility of a defeat of an applicant's purpose if the adversary had advance knowledge of the intended application will be an appropriate and justifiable instance where notice need not be given.

(3) An interlocutory injunction can be discharged on an ex parte application if a case of sufficient cogency is made out and the plaintiffs had been informed of the application. In this case, sufficient cogency was made out.

(4) The defendant was gravely prejudiced by the continuance of the injunction. The injunction prevented the defendant from promoting any Hydra Fitness products on behalf of HFEL for fear of being in contempt of court. Meanwhile, the living expenses of the defendant's family continued to accrue as the members of the family were still in Singapore. It was also because of the injunction that the immigration authorities were querying the defendant on his application for an employment pass.

(5) The plaintiffs were invited to attend but they failed to do so. On that ground alone, the court could have discharged the injunction.

(6) The court also had serious reservations as to whether full and frank disclosure was made by the plaintiffs when they obtained the injunction. Where an ex parte application is made, the plaintiff is not only obliged not to mislead the court, but in addition, he is under a duty to disclose to the court all matters which are within his knowledge which are material to the proceedings and which are or may be in favour of an absent party. A matter is regarded as material if it is a factor that the court will take into account in the exercise of its discretion.

(7) The plaintiffs had not disclosed that a winding-up petition had been served on them before the injunction was granted. Also, the fact that the paid-up capital of the plaintiffs was only $2 was not disclosed. Further, no mention was made of the letter from the defendant's solicitors to the plaintiffs' solicitors, whereby the purported contract between the parties was terminated.

(8) It is a rule based on public policy that if, on an ex parte application, the plaintiff does not make full and sufficient disclosure, his application will, in the absence of special circumstances, be dismissed.

(9) On the strength of the defendant's facts and argument, the court was of the opinion that there was no full and frank disclosure of material facts. In the circumstances, the court discharged the interim injunction.

(10) The court also ordered that the prayer as to an inquiry as to damages be reserved for the trial judge with liberty to the defendant to apply if the matter did not proceed to trial.

Cases referred to

1 *Pickwick International Inc (GB) Ltd* v *Multiple Sound Distributors Ltd* [1972] 3 All ER 384 (folld)
2 *Pickwick International Inc (GB) Ltd* v *Multiple Sound Distributors Ltd* [1972] RPC 786 (folld)
3 *Mullins* v *Howell* (1879) 11 Ch D 763 (folld)
4 *London City Agency* v *Lee* [1970] Ch 597 (folld)
5 *Tunas (Pte) Ltd* v *Mayer Investment Pte Ltd* [1989] 2 MLJ 132 (refd)
6 *Thomas A Edison Ltd* v *Bullock* (1912) 15 CLR 679 (folld)
7 *Clifton* v *Robinson* (1853) 16 Beav 355; 51 ER 816 (folld)
8 *Dalglish* v *Jarvie* (1850) 2 Mac & G 231; 42 ER 89 (folld)

Legislation referred to

Rules of the Supreme Court 1970 O 29 r 1
Rules of the Supreme Court [UK] O 29 r 1

David See (*Leong Choi Fun* (*Miss*) with him) for the plaintiffs.
Koh Kok Wah for the defendant.

Cur Adv Vult

Coomaraswamy J: This appeal is against my decision to discharge an interim injunction obtained by the plaintiffs against the defendant. The interim injunction restrained the defendant, his servants or agents from infringing the plaintiffs' rights in an agency agreement entered into between the plaintiffs and Hydra Fitness Equipment Ltd ('HFEL') and from selling Hydra Fitness products in the territories of Singapore, Malaysia, Indonesia, Brunei and Hong Kong.

On the hearing of the notice of motion for the continuation of the injunction, I adjourned the matter and ordered the plaintiffs to fortify their undertaking as to damages by a bank guarantee in the sum of $20,000 and that the interim injunction do continue till the next hearing. The guarantee was duly furnished by the plaintiffs. The defendant made an application before the registrar to strike out the plaintiffs' statement of claim. No order was made but the plaintiffs were given leave to amend their statement of claim.

The defendant then made an ex parte application to discharge the interim injunction. Since it was an ex parte application, the papers were not served on the plaintiffs. However, in what they regarded as a matter of courtesy and etiquette, the defendant's solicitors informed the plaintiffs' solicitors of the ex parte application by telex. Instead of turning up to state their objections or to ask for an adjournment at the ex parte application before me, the plaintiffs' advisers chose not to come and instead protested with a note to the defendant's solicitors. Further, the plaintiffs' solicitors had, before the hearing, been advised by my secretary of the ex parte hearing but they nevertheless decided not to attend.

Although they did not say so, the defendant's solicitors were (in giving notice to the plaintiffs' solicitors of the ex parte application) acting under the now re-activated and established practice in England resulting in what is called 'an opposed ex parte application'. Its history, nature and usefulness are examined in detail by Megarry J (as he then was) in *Pickwick International Inc (GB) Ltd* v *Multiple Sound Distributors Ltd.*[1]

Megarry J after hearing both parties dismissed the ex parte application for an injunction and the plaintiffs appealed. At the hearing of the ex parte appeal later that

day, the defendants were again represented by counsel. Russell LJ described the appearance of the adversary in ex parte matters as 'the modern and very sensible practice to assist the court' [in *Pickwick International Inc (GB) Ltd* v *Multiple Sound Distributors Ltd*[2]] at p 790, line 13.

The views of Megarry J and Russell LJ were those of judges in the Chancery Division where an application for ex parte injunctions is by motion. A similar view on representation of the adversary is held in the Queen's Bench Division where applications of this type are made by summons-in-chambers, as they are in Singapore. The need for notice to the adversary is specified in that Division's Practice Direction dated 30 March 1983, in reference to RSC O 29 r 1 (identical in terms in Singapore and England). Part B-3, para 2(c) of that Direction requires an affidavit in support of an ex parte application for an injunction to contain:

> a clear and concise statement of the facts justifying an application ex parte including *details of any notice given to the defendant or, if none has been given, the reasons for giving none.* (Emphasis added.)

A practice direction made in England has, as such, no authority in Singapore. However, in the Queen's Bench Division this Practice Direction and, in the Chancery Division, what Megarry J and Russell LJ said are, inter alia, the foundations on which the English decisions on interim injunctions are based. In view of the highly persuasive authority in Singapore of English decisions on injunctions, these foundations cannot be ignored by a Singapore court. In my humble view, the opponent should be given notice of the ex parte application and invited to attend. Alternatively, in appropriate and justifiable instances, adequate reason for not giving such notice should be given to the court on affidavit. In some cases, eg Marevas, an applicant's purpose can be defeated by his opponent having advance knowledge of an ex parte application for an injunction. Possible defeat of an applicant's purpose if the adversary had knowledge of the intended application will be an appropriate and justifiable instance where notice need not be given.

The plaintiffs in this case were not before me on the defendant's ex parte application to discharge the interim injunction. Notwithstanding their solicitors' advance knowledge of that ex parte application, I proceeded to hear the defendant's counsel. On the strength of his arguments, I discharged the interim injunction that I had earlier made. I also ordered that the prayer as to an inquiry as to damages be reserved for the trial judge with liberty to the defendant to apply if the matter did not proceed to trial. I now give my reasons for the orders I made.

In *Mullens* v *Howell*,[3] the then Master of the Rolls, Sir George Jessel, said:

> The court has jurisdiction over its own orders, and there is a larger discretion as to orders made on interlocutory applications than as to those which are final judgments.

This shows that the court has, where appropriate, a wide discretion over interlocutory applications such as interlocutory injunctions and may discharge them if there is good reason so to do.

One of the issues to which I will address myself is whether the court may dissolve an application ex parte rather than only after an inter partes hearing. The authors in *Atkin's Forms* (1986 re-issue) Vol 22 at p 84 are of the opinion that an interlocutory injunction may be discharged on an ex parte application provided:

(a) a case of sufficient cogency can be made out; and
(b) the plaintiffs are informed of the application.

Further support for the proposition that an injunction can be dissolved ex parte is found in *London City Agency* v *Lee*.[4] Megarry J (as he then was) said:

> In my judgment the court has ample jurisdiction to make such an order, and there is no established rule of practice to prevent the court doing so in a proper case. I do not accept what is said in *Halsbury* as a correct statement of the present law. *The court will grant an interlocutory injunction on an ex parte application if a case of sufficient cogency is made*, and no reason has been suggested why, if an application ex parte to discharge or vary such an injunction is supported by sufficiently cogent grounds, the courts should not do what is sought. If time permits, it is plainly preferable that any such application should be made on due notice; but in a case of sufficient urgency, ... I cannot believe it to be the law that however clearly it has been established that it would be wrong for the injunction to continue in force unchanged, the court is impotent to discharge or vary it until notice of motion has been given and has expired, especially where (as here), counsel for those entitled to the injunction has in fact been present on the hearing of the ex parte application for the discharge or variation. *Accordingly, in my judgment, the only question here is whether the applicants ex parte have made out a sufficient case for discharging or varying this injunction.* (Emphasis added.)

In my view, a case of sufficient cogency was made out. The defendant was gravely prejudiced by the continuance of the injunction. The injunction prevented the defendant from promoting any Hydra Fitness products on behalf of HFEL for fear of being in contempt of court. Meanwhile, the living expenses of the defendant's family continued to accrue as the members of the family were still in Singapore. It was also because of the injunction that the immigration authorities were querying the defendant on his application for an employment pass. The fact of a continuing injunction hovering over the defendant's head could have seriously hampered the defendant's application for such a pass. The defendant was hence severely prejudiced by the continuance of the injunction.

Further, and this is extremely important, the plaintiffs were duly notified by the defendant's solicitors and by my secretary of the defendant's application to discharge the injunction before me. They were to all intents and purposes invited to attend but they failed to do so.

I have said that an injunction obtained ex parte can, for good reason, be discharged ex parte. On that ground alone, I could have discharged the injunction. However, I also had serious reservations as to whether full and frank disclosure was made by the plaintiffs when they obtained the injunction.

Special duties arise when an application for an ex parte interim injunction is made. Where an ex parte application is made, the plaintiff is obliged not only not to mislead the court but in addition, he is under a duty to disclose to the court all matters which are within his knowledge which are material to the proceedings and which are or may be in favour of an absent party. A matter is regarded as material if it is a factor that the court will take into account in the exercise of its discretion.

I have examined the authorities on the duty of full and frank disclosure in *Tunas (Pte) Ltd* v *Mayer Investment Pte Ltd*[5] and will only make brief reference to them here. As Issacs J in *Thomas A Edison Ltd* v *Bullock*[6] said:

> Ubberima fides is required, and the party inducing the court to act in the absence of the other party fails in his obligation unless he supplies the place of the absent party to the extent of bringing forward all the material facts which the party would presumably have brought forward in his defence to that application. Unless that is done, the implied condition upon which the court acts in forming its judgment is unfulfilled and the order so obtained must almost invariably fail.

A very material fact that was suppressed was the petition to wind up the plaintiffs which was served on the plaintiffs before the ex parte application was made. The fact that the plaintiffs had only a paid-up capital of $2 was also not disclosed. Further, no mention was made of the letter from the defendant's solicitors to the plaintiffs' solicitors, whereby the purported contract between the parties was terminated.

In reply, the plaintiffs said that their clients were lay people who were not aware of the winding-up petition when they gave instructions for the preparation of the affidavit. It has been held that the failure to inform the court of a material fact is not excused merely because the party seeking interlocutory relief has forgotten its existence. The authority is *Clifton* v *Robinson*.[7] It has also been held in *Daglish* v *Jarvie*[8] that a plaintiff is not necessarily excused because he believed that particular matters known to him are not material.

Hence, if on an ex parte application, the plaintiff does not make full and sufficient disclosure, his application will, in the absence of special circumstances, be dismissed. This is a rule based on public policy. It is designed to prevent abuse of the procedure of court by a person who has a special advantage in view of the absence of the other party.

The court should deal with great strictness and severity with persons who apply for ex parte injunctions. A party applying is bound to put the court in possession of all the facts in order to enable it to judge whether the defendant ought to be put to what may be described as a very serious sanction, ie a temporary injunction.

It was in the light of these reasons that I felt that a sufficient case of cogency had been made out for discharge. In any event, on the strength of the defendant's facts and argument, I was of the opinion that there was no full and frank disclosure of material facts. In the circumstances, I discharged the interim injunction.

Application allowed.

Solicitors: *David See & Co; Arthur Loke & Partners.*

Reported by *Terence Tan Bian Chye*

Tay Theng Khoon & Anor v Lee Kim Tah (Pte) Ltd

HIGH COURT (SINGAPORE) —ORIGINATING SUMMONS NO 347 OF 1988
THEAN J
27 MARCH 1989

Land Law — Agreement for sale and purchase of land — Requisitions — Unsatisfactory replies to requisitions — Property possibly affected by road widening — Situation of property such that prudent purchaser would realize that property would be so affected — Property required to be re-zoned for development — Subject to development charge

Words and Phrases — 'Proposal' — Singapore Law Society's Conditions of Sale, cl 7

The plaintiffs contracted to sell two lots of freehold property to the defendants subject to the Law Society's Conditions of Sale. The defendants subsequently informed the plaintiffs that replies from the Public Works Department ('PWD') and the Development and Building Control Division ('DBCD') were unsatisfactory and reserved their right to withdraw from the purchase of the property. The defendants claimed that the road interpretation plan indicated that the property would be affected by road widening. The DBCD had also replied that the property was subject to public open space zoning and would have to be re-zoned for development. The defendants contended that these replies were unsatisfactory, which gave them a right to withdraw from the purchase under cl 7 of the agreement. The defendants also claimed that since there was a development charge for residential development, in effect there was a denial of planning permission for the development of the property for residential purposes and that they were therefore entitled to withdraw from the purchase under cl 8 of the agreement. The plaintiffs sued for performance of the agreement.

Held, dismissing the plaintiffs' claims:

(1) The test of unsatisfactoriness of a reply to government requisitions was objective and not subjective, given the wording of the relevant clause in the agreement.

(2) The siting of the property in relation to existing roads would make it clear to a reasonably prudent purchaser that the